

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNELL COLE, # 274444,)	
)	
Petitioner,)	Case No. 1:04-cv-798
)	
v.)	Honorable Robert Holmes Bell
)	
KENNETH McKEE,)	
)	<u>ORDER OF DISMISSAL</u>
Respondent.)	
)	

In accordance with the memorandum opinion issued this date:

IT IS ORDERED that the report and recommendation of the magistrate judge (docket # 34) be and hereby is ADOPTED as the opinion of the court and that petitioner's objections (docket # 38) are OVERRULED.

IT IS FURTHER ORDERED that petitioner's motion to amend the petition (docket # 31) is DENIED as futile.

IT IS FURTHER ORDERED that respondent's motion to dismiss (docket # 11) is hereby GRANTED and the petition is DISMISSED WITH PREJUDICE as untimely.

Date: October 28, 2005

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE